KOH BOON YEOW

v.

HAPPY REALTY SDN BHD

HIGH COURT MALAYA, MELAKA
AHMAD MAAROP JC
[CIVIL APPEAL NO: 11-27-2001]
31 DECEMBER 2001

LANDLORD AND TENANT: *Recovery of possession - Right to recover vacant possession - Notice served on tenant during transitional period of new Rent Act - Whether tenancy a "deemed tenancy" - Whether notice served rendered invalid - Whether landlord's right to vacant possession could only be exercised after transitional period - Whether exceptions in ss. 6(1) and 8(1) of new Act applicable to entitle landlord right to vacant possession - Control of Rent (Repeal) Act 1997, ss. 5, 6, 8, 9, 11*

The appellant/tenant refused to deliver vacant possession of the respondent/ landlord's premises after the expiry of the notice served on him. The respondent filed an application for summary judgment for, *inter alia*, vacant possession of the premises in the magistrate's court. The magistrate allowed the application. Hence, this appeal. The appellant claimed that the notice served on him on 23 October 1999 was invalid. That was because it was served during the transitional period after the Control of Rent Act 1966 was repealed by the Control of Rent (Repeal) Act 1997 ('Act 572').

Held:

[1] Act 572 which came into force on 1 September 1997 repealed the Control of Rent Act 1966. It provides for transitional provisions and s. 5 of Act 572 defines "transitional period" to mean "the period commencing on 1 September 1997 and ending on 31 December 1999". Section 3 provides that upon the repeal of the Control of Rent Act 1966, any tenancy between a landlord and a tenant existing before the date of repeal of the Rent Control Act 1966 shall cease. However, s. 6 provides that the tenant would then be deemed to have entered into a "deemed tenancy" with the landlord as from the date of the repeal of the Control of Rent Act 1966. (p 475 c-d)

[2] The "deemed tenancies" created under s. 6(1) of Act 572 shall be in force from 1 September 1997 to 31 December 1999. During this period, the tenancies can only be terminated and thus vacant possession surrendered by mutual consent under s. 6(2). The only other reason which can give a

landlord of a "deemed tenancy" the right to recover vacant possession is the non-payment of rent as provided under s. 8. It followed, therefore, that the tenants of "deemed tenancies" are assured of and entitled to possession of the premises in question until 31 December 1999. During that period, unless the circumstances under s. 6(2) or s. 8(1) are applicable, they cannot be asked to give vacant possession of the premises. The landlords will have to wait until after the expiry of these tenancies on 31 December 1999. (p 479 c-e)

[3] By virtue of s. 11(1) of Act 572, upon the expiry of the transitional period on 31 December 1999, all "deemed tenancies" shall cease to be in force and the landlords shall thereafter have the right to vacant possession and be entitled to any arrears in rent. These rights do not accrue upon the expiry of the transitional period on 31 December 1999 but after on 1 January 2000. This is because of the words "selepas itu" under s. 11(1). Therefore, the earliest date the notice can be given under s. 11(2) is on 1 January 2000. Since the notice herein was served on 23 October 1999, it was not a valid notice. In the circumstances, the decision of the magistrate should be set aside. (pp 479 f-g, h & 480 e & f)

[Appeal allowed.]

Case(s) referred to:

Becke v. Smith [1936] 2 M & W 191 ***(refd)***

Jacks (William) & Co v. Palmer's Shipbuilding, Iron Co [1928] 98 LJ KB 366 ***(refd)***

Krishnadas Achutan Nair & Ors v. Maniyam Samykano [1997] 1 CLJ 636 ***(refd)***

Malaysian Vermicelli Manufacturers (Melaka) Sdn Bhd v. PP [2001] 7 CLJ 74 ***(refd)***

Sukma Darmawan Sasmitaat Madja v. Ketua Pengarah Penjara Malaysia & Anor [1999] 2 CLJ 707 ***(refd)***

Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v. Liau Nyun Fui [1991] 1 CLJ 458; [1991] 1 CLJ (Rep) 458 ***(refd)***

Yeong Peng Wah v. Bahal Singh [1961] 27 MLJ 316 ***(refd)***

Legislation referred to:

Control of Rent (Repeal) Act 1997, ss. 3, 5, 6(1), (2), 8(1), 9, 11(1), (2), (3)(a)
Federal Constitution, art. 76(4)
Subordinate Court Rules 1986, O. 26A

Other source(s) referred to:

Black's Law Dictionary, 7th edn 1999

For the appellant - KP Ng; M/s KP Ng & Amardas
For the respondent - Ahmad Musthafi; M/s Koh Kim Leng & Co

Reported by Usha Thiagarajah

JUDGMENT

Ahmad Maarop JC:

The plaintiff (respondent) is a registered owner of premises No. 2, Jln. Kee Ann, Ground Floor, 75100 Melaka. The defendant (appellant) was the tenant of the respondent. The premises was a controlled premis under the Control of Rent Act 1966. Pursuant to a verbal tenancy agreement made in 1999 between the respondent and the appellant, the respondent agreed to rent out the premises to the appellant with a monthly rental of RM367.83. By a notice dated 20 October 1999 issued by the respondent's solicitor, the appellant was asked to deliver vacant possession of the premises within three months from the date of service of the notice. The notice was served on the appellant on 23 October 1999. The respondent alleged that although the notice had expired on 31 January 2000, the appellant refused and/or neglected to deliver vacant possession of the premises to the respondent. The respondent therefore prayed for vacant possession of the premises, mesne profit and cost. The appellant filed his statement of defence (pp. 15-17 of the Appeal Record).

The respondent filed an application for summary judgment (pp. 18-20 of the Appeal Record) under O. 26A Subordinate Court Rules 1986 (SCR) asking for vacant possession of the premises, mesne profit, interest and costs.

On 17 July 2001, the learned magistrate, Magistrate's Court Malacca allowed the respondent's application with cost (pp. 39-40 of the Appeal Record). Being dissatisfied with the said decision, the appellant preferred an appeal to the High Court.

At the outset of the hearing of the appeal, learned counsel for the appellant informed the court that the appellant and the respondent agreed that the premises in question was a controlled premises under the Control of Rent Act 1966. Starting his submission, learned counsel for the appellant stated that there was only one issue for the court to consider in this appeal, ie, whether the notice dated 20 October 1999 sent by the respondent asking the appellant to deliver vacant possession of the said premises was valid. It was the contention of the appellant that the notice was premature and invalid. According to the appellant, the effect of Akta Kawalan Sewa (Pemansuhan) 1997 (Act 572), was that all tenancies between landlords and tenants existing before the date of repeal of the Control of Rent Act 1966 (1 September 1997), shall be deemed to have ceased and that new tenancies were created by law during the transitional period (1 September 1997-31 December 1999). According to learned counsel for the appellant, upon the expiry of the transitional period on 31 December 1999, all the new tenancies created by Act 572 (under s. 6) ceased to be in force and thereafter, the landlords had the right to vacant possession of the premises. In order to exercise their right, landlords had to

serve on the tenants, notices under s. 11(2) of Act 572, giving the tenants three months notice to vacate the premises. In the case before the court, the notice dated 20 October 1999 was served on the appellant on 23 October 1999 **(before 31 December 1999)** but the three month period given in the said notice expired on 31 January 2000 (ie, after the expiry of the transitional period). Learned counsel for appellant contended that the three months notice could only be given **after** the expiry of the transitional period (ie, 31 December 1999). He relied on the usage of the words "upon expiry of the transitional period" (selepas habis tempoh peralihan) and "thereafter" (selepas itu) under s. 11(1) of Act 572, which he submitted, made it clear that the right of the respondent (landlord) to vacant possession of the premises only arose and could be exercised after 31 December 1999. According to him, the word "thereafter" (selepas itu) means "afterward, later". For this he relied on *Black's Law Dictionary*, 7th edn (1999), the case of *Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v. Liau Nyun Fui* [1991] 1 CLJ 458; [1991] 1 CLJ (Rep) 458 and the case of *Jacks (William) & Co v. Palmer's Shipbuilding, Iron Co* [1928] 98 LJ KB 366, 140 LT 473; 34 Com. Cas. 107 CA, *The English Empire Digest*, Replacement Volume 12, 1973 Reissue.

According to learned counsel for the appellant, in the is Lower Court, the learned magistrate held that since s. 11(2) of Act 572 did not say when the notice under the section should be issued, the notice could be issued at any time as long as the three month period given in the notice expired after 31 December 1999. Learned counsel for the appellant contended that such an interpretation would defeat the intention of the legislature in providing the giving of three month notice under s. 11(2) of Act 572. According to him, by virtue of s. 6(1) and s. 11 of Act 572, it was the intention of Parliament that tenants who were in actual occupation of controlled premises continue to have and enjoy possession of the premises until 31 December 1999. Thereafter, if landlords wanted to exercise their rights to have vacant possession they must give three months notice under s. 11(2). Learned counsel for the appellant submitted that if the magistrate was right there would be situations where tenants would be deprived of the three month period.

The trust of the respondent submission was that for notice under s. 11(2) of Act 572 to be validly given, there must be valid tenancy existing. Learned counsel for the respondent contended that if a notice under s. 11(2) was given on or before 31 December 1999, then the tenancy created under s. 6(1) of Act 572 would still be in existence and could be validly terminated. But if a notice under s. 11(2) was given after 31 December 1999, then there was no tenancy (in existence) to be terminated. Learned counsel for the respondent submitted that in this case the notice issued to the appellant was valid because on the date it was issued, the tenancy was still existing. According to him,

even though the three month period in the notice expired on 31 January 2000 (after the expiry of the transitional period), it did not matter because the appellant was still given the three month period which the legislature had intended to give to tenants like the appellant. According to learned counsel for the respondent the right to vacant possession accrued only after 31 December 1999.

The issue before the court was whether the notice dated 20 October 1999 and served on the appellant on 23 October 1999 was valid. This would depend on the interpretation of the relevant provisions under Act 572.

Act 572 was enacted pursuant to art. 76(4) of the Federal Constitution. It came into force on 1 September 1997. It repealed the Control of Rent Act 1966. It also provides for transitional provisions. In this connection, s. 5 of the Act 572 defines "transitional period" to mean "the period commencing on 1 September 1997 and ending on 31 December 1999". Section 3 of Act 572 provides that upon the repeal of the Control of Rent Act, any tenancy between a landlord and a tenant existing before the date of repeal of the Rent Control Act 1966, shall forthwith be deemed to have ceased.

Section 6 of Act 572 provides that:

> (1) **Walau apa pun seksyen 3,** mana-mana penyewa-penyewa, penyewa kecil atau penyewa bersama yang:
>
> (a) **telah sebenarnya menduduki premis** pada tarikh Akta dimansuhkan; dan
>
> (b) **jika tidak kerana termansuhnya Akta, boleh terus menduduki premis dengan sah,**
>
> **hendaklah disifatkan telah membuat suatu penyewaan dengan tuan rumah dari tarikh Akta dimansuhkan.**
>
> (2) Melainkan jika ditamatkan terlebih dahulu melalui persetujuan bersama pihak-pihak, penyewaan yang disifatkan telah dibuat di bawah subseksyen (1) **hendaklah berkuatkuasa sehingga habis tempoh peralihan.**

In other words although under s. 3, any tenancy between a landlord and a tenant existing before the date of repeal of the Control of Rent Act 1966, shall be deemed to have ceased, any tenant, sub-tenant or joint-tenant who was in actual occupation of the premises on the date of repeal of the Control of Rent Act 1966, and could have lawfully continued to occupy the premises if the Act was not repealed, shall be deemed to have entered into a tenancy with the landlord as from the date of the repeal of the Act. In this judgment, (using the term used in the heading of s. 6 of the English version of Act 572), I will refer to the tenancies created thereunder as "deemed tenancies".

It is clear from s. 6(2) of Act 572, that a tenancy deemed to have been entered into s. 6(1), shall remain in force until 31 December 1999. Under s. 8 of the Act, the amount of rental to be paid monthly by the tenants of the 'deemed tenancies' created pursuant to s. 6(1) of Act 572 shall be determined according to the formula set out in the Schedule to the Act.

Section 8 of Act 572 provides the provisions applicable in cases of non-payment of rental for the "deemed tenancies". The section provides:

> (1) Sekiranya penyewa tidak membayar sewa atau bayaran sewanya tertunggak semasa tempoh peralihan, tuan rumah hendaklah mempunyai hak untuk mendapat milikan kosong premis daripada penyewa tanpa membayar apa-apa pampasan.
>
> (2) Dalam menggunakan haknya untuk mendapat milikan kosong premis di bawah subseksyen (1), tuan rumah hendaklah mematuhi prosedur yang dinyatakan dalam subseksyen 11(2) dan 11(3) bagi mendapat kembali milikan kosong premis.
>
> (3) Apa-apa pertikaian yang berbangkit daripada perjalanan subseksyen (1) boleh dirujukkan oleh penyewa kepada Tribunal Penyahkawalan di bawah perenggan 10(1)(b) sebelum habis tempoh tiga bulan yang diperuntukkan dalam perenggan 11(3)(a).

It is clear that under s. 8, non-payment or arrears in payment of rental gives the landlord of a 'deemed tenancy' the right to vacant possession of the premises from the tenant. Apart from non-payment or arrears in payment of rental provided under s. 8(1), no landlord of any deemed tenancy is entitled to recover vacant possession of the premises for any other reason. This is made clear by s. 9 of Act 572 which provides:

> Kecuali bagi hak untuk mendapat milikan kosong premis di bawah seksyen 8, **tiada seorangpun tuan rumah berhak mendapat kembali milikan kosong premis bagi apa-apa sebab lain semasa tempoh peralihan.**

What would happen upon the expiry of the transitional period under Act 572 is answered by s. 11 which reads:

> (1) **Selepas habis tempoh peralihan** di bawah subseksyen 5(1) atau 5(2), mengikut mana-mana yang berkenaan, semua penyewaan yang disifatkan telah dibuat antara tuan rumah dengan penyewa di bawah subseksyen 6(1) **hendaklah terhenti berkuatkuasa** dan tuan rumah **hendaklah selepas itu**:
>
> (a) **mempunyai hak mendapat milikan kosong premis** daripada penyewa tanpa membayar apa-apa pampasan; dan
>
> (b) berhak mendapat apa-apa sewa yang terakru dan masih belum dibayar daripada penyewa pada tarikh habis tempoh peralihan.

(2) Seseorang **tuan rumah yang berhasrat untuk menggunakan haknya** di bawah perenggan (1)(a) hendaklah menyampaikan kepada penyewa suatu notis supaya mengosongkan premis.

(3) Notis yang disebut dalam subseksyen (2):

(a) **hendaklah memperuntukkan tempoh tiga bulan bagi penyewa mengosongkan premis itu;** dan

(b) boleh disampaikan kepada penyewa atau mana-mana orang yang diberikuasa untuk menerima penyampaian notis itu bagi pihaknya, yang kemudian daripada ini disebut "orang yang kepadanya penyampaian hendak dibuat":

(i) dengan menyerahkannya sendiri kepada orang yang kepadanya penyampaian hendak dibuat;

(ii) dengan menghantarnya melalui pos berdaftar yang dialamatkan kepada orang yang kepadanya penyampaian hendak dibuat di tempat kediaman orang itu yang lazim atau yang akhir diketahui; atau

(iii) dengan melekatkannya di suatu bahagian yang mudah dilihat di premis yang berhubungan dengannya jika penyampaian ke diri atau melalui pos berdaftar tidak dapat dibuat kepada orang yang kepadanya penyampaian itu hendak dibuat.

Before moving on to consider the effect of s. 11 of Act 572, the court reminds itself that it is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used and to the grammatical construction, unless that is at variance with the intention of the legislature (to be collected from the statute itself) or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience but no further. (Parke B in *Becke v. Smith* [1936] 2 M & W 191 at p. 195, *Sukma Darmawan Sasmitaat Madja v. Ketua Pengarah Penjara Malaysia & Anor* [1999] 2 CLJ 707). In *Krishnadas a/l Achutan Nair & 3 Ors v. Maniyam a/l Samykano* [1997] 1 CLJ 636, at p. 645, the Federal Court said:

> The function of a Court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment. *Prima facie*, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases.
>
> A judicial interpreter is therefore not entitled to disregard words used in a statute on subsidiary legislation or to treat them as superfluous or insignificant. It must be borne in mind that:

> As a general rule a court will adopt that construction of a statute which will give some effect to all of the words which it contains. Per Gibbs J in *Beckwith v. R* [1976] 12 ALR 333, at p. 337.

In my view, considering the clear words in s. 11 in the light of the authorities adverted to above, particularly the words "selepas habis tempoh" (upon the expiry of) and "selepas itu" (thereafter) in s. 11(1) of Act 572, the meaning of that section is unmistakable. Upon expiry of the transitional period, all "deemed tenancies" shall cease to be in force and the landlords shall thereafter (ie, after the expiry of the transitional period), (a) have the right to vacant possession of the premises, and (b) be entitled to rental accrued and remaining unpaid. Under s. 11(1), the right to vacant possession and arrears of rental accrues not upon the expiry of the transitional period but after it. This is because of the presence of the words "selepas itu" (thereafter) under that section. If the legislature had intended the right to vacant possession to accrue upon the expiry of the transitional period, the words "selepas itu" (thereafter) would not have been used. In other words, on 1 January 2000, the deemed tenancies are no longer in force and with effect from that date, the landlords shall have the right to vacant possession of the premises as well as any rental which had accrued or remaining unpaid. However, s. 11(1) must be read together with s. 11(2) of Act 572. Section 11(2) requires that a landlord who wishes to exercise his right (to vacant possession) to serve on the tenant, a notice to vacate the premises. Section 11(3) requires the notice to provide for a period of three months for the tenant to vacate the premises. The requirements under s. 11(2) and 11(3) of Act 572 are mandatory. It is noted that s. 11 is silent as to when the notice must be given and this had given rise to the dispute in this appeal. Learned counsel for the appellant contended that the notice under s. 11(2) could not be given on or before 31 December 1999, because to do so would deprive the appellant of the three month notice which ran from 1 January 2000, which the legislature had intended to give to the deemed tenants like the appellant. Learned counsel for the respondent contended that the notice under s. 11(2) could be given at any time. According to him, the most important thing was that the tenant must be given three months notice. As long as the tenant was given three month notice, it did not matter even if the notice was given on or before 31 December 1999.

Admittedly, s. 11 does not specify when the notice under s. 11(2) must be or could be given. However, in my view, s. 11 must not be considered in isolation. In construing s. 11, its connection with other sections in Act 572 must be considered, particularly ss. 1 to 9 (*Yeong Peng Wah v. Bahal Singh* [1961] 27 MLJ 316 and *Malaysian Vermicelli Manufacturers (Melaka) Sdn Bhd v. Pendakwa Raya* [2001] 7 CLJ 74). In *Yeong Peng Wah v. Bahal Singh* at p. 317 Ong J said:

> I need hardly add that it is a cardinal rule of construction that in construing any particular clause in a statute one has to look to its connection with other clauses in the same statute, and the conclusions which, on comparison with other clauses, many reasonably and obviously be drawn. If comparison of one clause with others in the statute makes a certain proposition clear and undoubted, the Act must be construed so as to make it a consistent and harmonious whole. If after all it turns out that that cannot be done, the construction that produces the greatest harmony and the least inconsistency is that which ought to prevail.

When s. 11 is considered in the light of the other relevant sections in Act 572 adverted to earlier, the intention of the legislature in enacting Act 572 is clearly discernible from the clear words of the relevant sections. The deemed tenancies created under s. 6(1) shall be in force from 1 September 1997 to 31 December 1999. During this period, the tenancies can only be terminated (and thus vacant possession surrendered) by mutual consent under s. 6(2) of Act 572. The only other reason which can give a landlord of a deemed tenancy, the right to recover vacant possession is the non-payment of rent as provided under s. 8 of Act 572. In my view, unless the circumstances under s. 6(2) or s. 8(1) can be proven to be applicable, the tenants of the deemed tenancies are assured of and entitled to possession of the premises in question until 31 December 1999. During that period, unless either the circumstances under s. 6(2) or s. 8(1) of Act 572 are applicable, they could not be asked to give vacant possession of the premises. The landlords would have to wait until after the expiry of these tenancies on 31 December 1999. That this is guaranteed by Act 572, is clear from s. 9. The tenants of the deemed tenancies were entitled to remain on the premises until 31 December 1999. I shall refer to this as the first assurance. This assurance is reinforced by s. 11(1) of Act 572 when it provides that **upon the expiry of** the transitional period (on 31 December 1999), all deemed tenancies shall cease to be in force and the landlords **shall thereafter** have the right to vacant possession and be entitled to any rental in arrears. As I have held earlier, that right did not accrue on 31 December 1999 but on 1 January 2000. Section 11(2) then comes into play. That section requires that any landlord who wishes to exercise the right to have vacant possession, must serve on the tenant a notice to vacate the premises. Next, s. 11(3)(a) requires that this notice shall provide for a period of three months for the tenant to vacate the premises. For reasons which I have alluded to earlier, the earliest date that this notice could be validly given was on 1 January 2000. In other words, a tenant of a deemed tenancy was entitled to be given three month period from the date of service of the notice, to make the necessary preparation to hand over vacant possession, and that the three month period must be provided in the notice which could only be served on the tenant on 1 January 2000 or any date thereafter. This, in my view is the second assurance intended to be given by the legislature and

entrenched in the provisions under Act 572. To hold that the notice (under s. 11(2) of Act 572) could be given at any time, even before 31 December 1999, would, to my mind render the first and the second assurance which the legislature had intended to provide under Act 572 nugatory. It was contended on behalf of the respondent that the notice under s. 11(2) of Act 572 must be served on 31 December 1999 at the latest. It was submitted that if it was served on 1 January 2000 or any subsequent date, there was no tenancy to terminate, because by then the deemed tenancy in this case had ceased to be in force. With respect I do not agree. In my view, the purpose of serving the notice under s. 11(2) was not to terminate the tenancy. In fact there was no necessity of terminating any tenancy because on 31 December 1999, the tenancy would automatically cease to be in force. The purpose of sending the notice under s. 11(2), was actually to give sufficient notice on the tenant (the appellant) to vacate the premises so that the landlord (the respondent) could enjoy the right to vacant possession provided under s. 11(1) of Act 572.

All the appellant needed to do in order to succeed in this case was to convince the court that there were triable issues. I have no hesitation in concluding that the appellant had discharged that burden. This case had raised questions of law relating to interpretation of s. 11 of Act 572. But the material facts are clear and not in dispute. I have considered them in the light of the interpretation of s. 11 of Act 572 which I have explained earlier. In the circumstances, I hold that since the notice under s. 11(2) in this case (p. 32 of the Appeal Record) was served on 23 October 1999, it was not a valid notice. The respondent had therefore failed to comply with the mandatory statutory requirement under s. 11(2) and 11(3) of Act 572 to entitle it to the remedies it had sought for. In the circumstances, the decision of the learned magistrate made on 17 July 2001 cannot stand and is hereby set aside.

In the result, the appeal is allowed with cost.